

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

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IN THE MATTER OF:

EDWARD YOVELLA

RESPONDENT

)
) SECRETARY OF STATE
) DIVISION OF WATER
) POLLUTION CONTROL
)
) CASE NUMBER WPC07-0225
)
) DOCKET # 04.30-098444A

AGREED ORDER

This matter came to be heard before the Tennessee Water Quality Control Board upon the Commissioner's Order and Assessment of Civil Penalty and the Respondent's Petition for Appeal. The Board, a quorum present, hereby adopts the following Findings of Fact, Conclusions of Law, Order and Assessments to which the parties have agreed, as evidenced by their signatures below.

FINDINGS OF FACT

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

II.

Edward Yovella (hereinafter "the Respondent") is a resident of the state of Tennessee and is the owner of property located at 477 Central View Road, in Union County (hereinafter "the site"). Service of process may be made on the Respondent at 477 Central View Road, Andersonville, Tennessee 37705.

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the "Rule"). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a "person" as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification.

No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VI.

Byram's Creek and its unnamed tributary, described herein, are "waters of the state" as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

VII.

On September 20, 2005, division personnel from the Knoxville Environmental Field Office (EFO-K) conducted a complaint investigation at the site and noted that an earthen dam had been constructed, resulting in the impoundment of the unnamed tributary to Byram's Creek. No Erosion Prevention and Sediment Control (EPSC) measures had been installed. As a result, eroded material had entered the unnamed tributary upstream and downstream of the dam. A subsequent file review showed that coverage under an ARAP had not been requested or issued.

VIII.

On September 26, 2005, the division issued a Notice of Violation (NOV) to the Respondent for the violations observed during the September 20, 2005, complaint investigation. In the NOV, division personnel requested that the Respondent attend a Compliance Review

Meeting (CRM) on October 4, 2005, at the EFO-K to discuss the violations and necessary remedial measures to return the site to compliance.

IX.

On October 4, 2005, a CRM was held at the EFO-K. The Respondent agreed to remove the standpipe and to stabilize all disturbed ground within two weeks. The Respondent was instructed at that time to inform EFO-K personnel upon completion of these actions.

X.

On October 19, 2005, division personnel conducted a follow-up site visit and found that the Respondent had removed the standpipe from the dam and that seed and straw had been placed on disturbed soil.

XI.

On August 14, 2007, division personnel from the EFO-K conducted a complaint investigation and observed that the standpipe had been re-installed resulting in impoundment of the unnamed tributary.

XII.

On August 22, 2007, division personnel issued a second Notice of Violation (NOV) to the Respondent for the violations noted during the August 14, 2007, complaint investigation at the site. In the NOV, division personnel requested immediate removal of the standpipe in order to restore flow to the unnamed tributary.

XIII.

During the course of investigation, the division incurred DAMAGES in the amount of
THREE HUNDRED EIGHTY NINE DOLLARS AND FOUR CENTS (\$389.04).

CONCLUSIONS OF LAW

XIV.

By altering waters of the state without authorization under an ARAP, the Respondent has
violated T.C.A. §§ 69-3-108(a)(b), and 114(b), which state in part:

§ 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of

water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XV.

By causing a condition of pollution to the unnamed tributary to Byram's Creek, the Respondent has violated T. C. A. Section 69-3-114(a).

§ 69-3-114(a) states:

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XVI.

WHEREFORE, PREMISES CONSIDERED, the Board hereby ORDERS that:

1. The Respondent shall not impede or obstruct base flow to the unnamed tributary downstream of the impoundment. Respondent shall not re-install a standpipe on the culvert at the impoundment.
2. The Respondent shall perform stream restoration as described below:
3. Respondent shall fill in the excavated "pool" areas within and above the former impoundment footprint to recreate habitat similar to the natural stream channel. This

filling shall be done in a manner that re-establishes some shallows (riffles), with a mix of gravel and cobble substrate, and results in a smaller, more natural, pool habitat.

4. The recreated pool habitat dimensions shall be no greater than one and a half foot deep, three feet wide and six feet in length, with the exception being the pool at the dam/pipe inlet. That pool shall probably be larger (~2' deep x 5' wide x 10' long) to accommodate for continued deposition. An even mix of riffle and pool habitat is the desired end result.
5. All unstable soil in the area should be stabilized and maintained until established with groundcover, preferably winter rye and fescue. Plantings of native shrubs and/or trees along the stream would be desirable but is not be required, since they were not present before the impoundment was constructed.
6. Respondent may also need to prevent the build-up of debris (stick, leaves, etc.) at the pipe inlet that might cause it to become plugged.
7. All required restoration and remediation work to be done by the Respondent is subject to final inspection by the Division.
8. The Respondent shall, within 30 days of entry of this ORDER, pay a reduced CIVIL PENALTY in the amount of ONE THOUSAND SEVEN HUNDRED DOLLARS (\$1,700.00) within thirty (30) days of his receipt of this approved Agreed Order.
9. The Respondent shall pay DAMAGES to the division in the amount THREE HUNDRED EIGHTY NINE DOLLARS AND FOUR CENTS (\$389.04) within thirty (30) days of his

receipt of this approved Agreed Order. Payment of the civil penalty and damages shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, WPC07-0225, should be included on or with the payment.

10. If the Respondent fails to comply with Part XVI, Item 1 above, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.
11. If the Respondent fails to comply with any of the Items 2-5 in Part XVI above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.
12. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

REASONS FOR DECISION

The Board approves this Agreed Order because it is a fair and reasonable settlement of the matter. The Board also approves of settlements in that they conserve the resources of the Department and the Board.

RIGHTS OF APPEAL

The Respondent is hereby notified and advised of the right to administrative and judicial review of this AGREED ORDER pursuant to the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-316, 4-5-317 and 4-5-322 and the Water Quality Control Act, T.C.A. §§ 69-3-111 and 69-3-115.

T.C.A. § 4-5-316 gives a party the right to submit to the Board a Petition for Stay of Effectiveness of a Final Order within seven (7) days after its entry. T.C.A. § 4-5-317 gives any party the right to file a Petition for Reconsideration within ten (10) days after the entry of a Final Order, stating specific grounds upon which relief is requested.

T.C.A. § 4-5-322 and 69-3-111 provide the right of judicial review by filing a Petition in the Chancery Court of Davidson County within sixty (60) days of entry of this Order.

APPROVED FOR ENTRY

FOR THE TENNESSEE WATER QUALITY CONTROL BOARD:

James W. Cameron
Chairperson

4/15/08
Date

David L. Henry
David L. Henry
Assistant General Counsel
Tennessee Department of Environment & Conservation
Office of General Counsel
20th Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243
(615) 532-0131

By entering into this Agreed Order, the Respondents knowingly and voluntarily waive their rights to appeal, as described in the RIGHTS OF APPEAL section, listed above.

Edward Yovella
Respondent
Edward Yovella
by BEH.
Attorney

3-17-2008
Date

Entered in the Office of the Secretary of State, Administrative Procedures Division, this

15th day of April, 2008.



Thomas G. Stovall, Director
Administrative Procedures Division

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